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No. 90-1714

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

REGIONAL AIRLINE PILOT ASSOCIATION AND JAMES BISHOP,

Petitioners,

v.

WINGS WEST AIRLINES, INC., dba AMERICAN EAGLE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does a carrier violate the Railway Labor Act by making unilateral changes in working conditions after a union has been certified as the representative of its pilots but before collective bargaining has begun or any agreement has been reached?

LIST OF PARTIES

The parties to the proceedings below and before this Court are:

1. Regional Airline Pilot Association
2. James Bishop
3. Wings West Airlines, Inc. d/b/a American Eagle[1]

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[1] Wings West Airlines, Inc. is a wholly-owned subsidiary of AMR Eagle, Inc., which is wholly owned by AMR Corporation.

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REGIONAL AIRLINE PILOT ASSOCIATION AND JAMES BISHOP,

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v.

WINGS WEST AIRLINES, INC., dba AMERICAN EAGLE,

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Wings West Airlines, Inc., dba American Eagle respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's opinion in this case, *Regional Airline Pilot Association, et al. v. Wings West Airlines, Inc., dba American Eagle* (hereinafter *"Wings West"*). That opinion is reported at 915 F.2d 1399 (1990).

STATEMENT OF THE CASE

Petitioners Regional Airline Pilot Association and James Bishop (hereinafter collectively "RAPA") filed an amended complaint for injunctive relief and unspecified damages against Respondent Wings West, Inc., dba American Eagle (hereinafter "Wings West") alleging that (1) during the period that the National Mediation Board was conducting an election to determine whether RAPA would represent the pilots, Wings West violated the Railway Labor Act (hereinafter "RLA") by promising the pilots certain pass privileges but failing to provide them, and (2) sixteen days after RAPA's certification as the union for the pilots, Wings West withdrew certain other pass privileges that had previously been given to the pilots without first engaging in collective bargaining in violation of section 2, First, Second, Third and Fourth of the RLA. The District Court granted summary judgment in favor of Wings West on the ground that it lacked jurisdiction because the disputed issue was either a "minor dispute" or a "representation dispute." Pet. App. A, pp. 2a-4a.[2]

On appeal, the Ninth Circuit found that the District Court erroneously labeled the dispute as a "minor dispute" because no collective bargaining agreement existed or had ever existed between the parties. Pet. App. A, p. 4a. Moreover, at oral argument before the Ninth Circuit, both parties agreed that, as RAPA was certified by the National Mediation Board on September 13, 1988, RAPA's

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[2] References herein to Appendices to the Petition are abbreviated "Pet. App."

precertification claims of interference and discrimination became moot. Pet. App. A, p. 5a.

The Ninth Circuit rejected RAPA's assertion that, by analogy to the National Labor Relations Act (hereinafter "NLRA"), the RLA prohibited a carrier from making unilateral changes in working conditions prior to commencement of bargaining with a newly certified representative, holding that such interjection of the federal courts in the bargaining process is not authorized by section 2, First as interpreted by the Supreme Court in *Williams v. Jacksonville Terminal Co.*, 315 U.S. 386 (1942) (hereinafter *"Williams"*), and *Chicago & N.W. Ry. Co. v. United Transp. Union*, 402 U.S. 570 (1971) (hereinafter *"Chicago & N.W. Ry."*). Pet. App. A, pp. 6a-7a, 10a. Rather, the policy of the RLA requires the federal courts to take care not to interfere with the bargaining process unless an injunction is the only practical, effective means of enforcing the section 2, First duty to exert every reasonable effort to make and maintain agreements. Pet. App. A, p. 8a. The Ninth Circuit concluded that, while it possessed jurisdiction to enforce section 2, First through Fourth, RAPA failed to state a claim for such federal court intervention where no agreement had been reached and collective bargaining had not yet even begun. Pet. App. A, p. 10a.[3]

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[3] Even if RAPA had thought of it prior to its Petition for Rehearing to the Ninth Circuit, an allegation that it had contacted the carrier during the sixteen day period between certification and the carrier's change in the pass privileges to arrange the first bargaining session would not have stated a claim for federal court intervention under *Chicago & N.W. Ry.*

REASONS WHY THE PETITION SHOULD BE DENIED

I. SUMMARY OF THE REASONS WHY THE PETITION SHOULD BE DENIED

The decision of the Ninth Circuit below is in accord with controlling decisions of this Court holding that a carrier does not violate the RLA by unilaterally changing working conditions after a union has been certified as the representative of its employees but before collective bargaining has begun or any collective bargaining agreement has been reached. *Williams*, 315 U.S. at 401-402; *Detroit & Toledo Shoreline Ry. Co. v. United Transp. Union*, 396 U.S. 142, 158 (1969) (hereinafter *"Detroit & Toledo"*). The Ninth Circuit properly concluded that the role of the federal courts in enforcing the RLA was not analogous to the administrative role of the National Labor Relations Board (hereinafter "NLRB") in adjudicating unfair labor practices arising under the NLRA. In adhering to the RLA policy that the federal courts should not intrude into the bargaining process unless an injunction is "the only practical, effective means of enforcing the duty to exert every reasonable effort to make and maintain agreements,"[4] the Ninth Circuit correctly held that RAPA failed to state a claim for relief. Pet. App. A, p. 10a.

The decision below does not conflict with either of the decisions of the Circuit Courts cited by Petitioner, *International Assn. of Machinists v. Transportes Aereos Mercantiles Pan Americandos, S.A., a/k/a Tampa Airlines*, 924 F.2d 1005 (11th Cir. 1991) (hereinafter *"Tampa Airlines"*) and *International Assn. of Machinists & Aerospace Workers v.*

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[4] *Chicago & N.W. Ry.*, 402 U.S. at 583.

Trans World Airlines, 839 F.2d 809 (D.C. Cir. 1988), amended 848 F.2d 232, cert. denied, 488 U.S. 820 (1988) (hereinafter "*Trans World Airlines*"). The D.C. Circuit in *Trans World Airlines* followed *Williams* as interpreted by *Detroit & Toledo*, holding that these decisions were binding "in a case like the one before [the court] where there has been 'absolutely no prior history of collective bargaining or agreement between the parties on any matter' (citation omitted)." *Trans World Airlines*, 839 F.2d at 814. The Eleventh Circuit in *Tampa Airlines* distinguished the facts before it from both the decision below and the decision in *Trans World Airlines*, concluding that the case before it fell outside the controlling effect of *Williams* as interpreted by *Detroit & Toledo*. *Tampa Airlines*, 924 F.2d at 1009. The petition for writ of certiorari should therefore be denied.

II. *WILLIAMS* AS INTERPRETED BY *DETROIT & TOLEDO* IS CONTROLLING IN THIS CASE

In *Williams*, this Court held that where no collective bargaining agreement existed, the RLA did not prohibit a carrier from making unilateral changes in working conditions pending negotiations with a newly certified collective bargaining representative. 315 U.S. at 402-403. Under such circumstances, the status quo provisions of section 6 of the RLA did not come into play. In *Detroit & Toledo*, Justice Black, in explaining *Williams*, stated:

> The decision [in *Williams*] rested partially on the ground that '[i]ndependent individual contracts are not affected by the Act' . . . And the [*Williams*] Court also said more narrowly that the status quo requirements of § 6 were inapplicable

> since that section applies only when a 'change in agreements' is involved . . . In *Williams*, there was absolutely no prior history of any collective bargaining or agreement between the parties on any matter.

396 U.S. at 158 (citations omitted).[5]

The Ninth Circuit's decision in *Wings West* is consistent with *Williams* and *Detroit & Toledo*. The Court gave full consideration to the undisputed facts before it: on September 13, 1988, RAPA was certified by the National Mediation Board as the bargaining representative of Wings West's pilots; sixteen days later Wings West made certain unilateral changes in pass privileges; these changes were made before commencement of collective bargaining; and there was no prior agreement between the parties on any matter. Pet. App. A, pp. 2a-4a. Based on these facts, which were virtually indistinguishable from those relied upon in *Williams*, the Ninth Circuit properly concluded that Wings West was not prohibited by the RLA from making the unilateral changes it did. Thus, the decision below is fully in accord with this Court's prior decisions and should not be disturbed.

RAPA's request that this Court overturn *Williams* is based solely on its contention that the post-certification

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[5] Contrary to RAPA's assertion at page 6 of the Petition, *Williams* did *not* hold that "the Railway Labor Act does not preclude an employer from making unilateral changes in working conditions *while the parties are bargaining* and before the parties arrive at a complete agreement" (emphasis added). In *Williams*, the unilateral change complained of took place after a request for bargaining but before bargaining began. This Court specifically distinguished between changes to conditions by collective bargaining agreement and those made by the carrier for its own convenience and purposes. *Williams*, 315 U.S. at 402.

status quo requirements of the NLRA as enforced by the NLRB should be engrafted upon the RLA. Petition, pp. 11-13. The Ninth Circuit cautioned in *Wings West* that the federal court's role in enforcing the RLA was *not* analogous to the administrative role of the NLRB in adjudicating unfair labor practices under the NLRA. Observing that the RLA does not provide for such an administrative agency, the Court found it "doubtful that Congress intended the federal courts to operate as the NLRB does under the detailed statutory prescriptions of the NLRA." Pet. App. A, p.7a. Instead, in reliance upon *Williams* and *Chicago & N.W. Ry.*, the Ninth Circuit adhered to the RLA's policy against federal court interference in the bargaining process where the facts do not show that the injunctive remedy is the only practical and effective means to enforce the duty in section 2, First to exert every reasonable effort to make and maintain agreements.

RAPA's fundamental misapprehension of the federal court's role in enforcing section 2, First is the only explanation for its absurd contention that the holding in *Wings West* encourages unions and carriers to *avoid* bargaining so that they may be free to strike and unilaterally act after certification and prior to commencement of negotiations. Petition, pp. 10-11. There is absolutely no suggestion in this case that Wings West has ever avoided bargaining. In effect, RAPA seeks to have the Court select a term of the collective bargaining agreement before the parties themselves have decided what the bargained-for terms shall be. It is well established that courts are not to intrude in deciding what the parties' agreement shall be; it is for the parties to decide "their own charter for the ordering of industrial relations." *Air Line Pilots Association v. O'Neill,*

___ U.S. ___, 111 S. Ct. 1127, 1133 (1991). This is particularly important before the parties have pieced together their first agreement. They are in the best position to determine which matters are to be set through bargaining and which should continue to be determined by the carrier in its judgment as the employer. The Ninth Circuit in *Wings West* has made clear, however, that if the conduct of a party undermines the RLA's bargaining and mediation processes, the federal court may issue an injunction to enforce section 2, First obligations, provided that there is no other practical or effective means to do so. Pet. App. A, pp. 8a-9a. *See also, Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515 (1937).

III. THE ALLEGEDLY "CONFLICTING" DECISION RELIED ON BY PETITIONERS IS FACTUALLY DISTINGUISHABLE

RAPA asserts that the decision in *Tampa Airlines* creates a conflict between the Circuits as to the extent to which an obligation to maintain the status quo is imposed under the RLA. Petition, pp. 8-9. This contention is wholly without merit, as the *Tampa Airlines* case is factually distinguishable from *Wings West* and *Trans World Airlines*. In the instant case, Wings West unilaterally modified certain pass privileges sixteen days after RAPA became certified as the representative of Wings West's pilots but before collective bargaining or mediation took place and before any agreement was reached.[6]

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[6] Similarly, in *Trans World Airlines*, where the court refused to enjoin the carrier from making prospective unilateral changes in working conditions, there had been no agreement

(Continued on following page)

In contrast, in *Tampa Airlines*, the International Association of Machinists & Aerospace Workers ("IAM") had been elected as the bargaining representative for the fleet service employees of Tampa Airlines. During the predecessor union's tenure as the employees' representative, collective bargaining had produced a tentative agreement regarding rates of pay, rules and working conditions. Although that agreement was never finalized or ratified, Tampa Airlines informed IAM at the commencement of bargaining that the agreement contained the existing rates of pay, rules and working conditions and constituted the status quo. After the union and the carrier had engaged in collective bargaining for six months, the carrier began making unilateral changes in working conditions notwithstanding its prior acknowledgment of the status quo. *Tampa Airlines*, 924 F.2d at 1006, 1008-1009.

Whereas in *Tampa Airlines* the parties were engaged in collective bargaining at the time of the carrier's unilateral changes to a status quo that Tampa Airlines conceded had been collectively bargained with the predecessor union (although never ratified), in *Wings West*, no prior agreement of any kind existed. Accordingly, as the two decisions are factually distinguishable, they do not conflict.

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between the parties on any matter. *Trans World Airlines*, 839 F.2d at 814. The D.C. Circuit, quoting *Williams*, pointed out that "[t]he institution of negotiations for collective bargaining does not change the authority of the carrier. The prohibitions of § 6 against changes of wages or conditions pending bargaining . . . are aimed at preventing changes in conditions previously fixed by collective bargaining agreements." *Trans World Airlines*, 839 F.2d at 813.

IV. THERE IS NO LEGAL CONFLICT BETWEEN THE *WINGS WEST* DECISION AND THE *TAMPA AIRLINES* DECISION

Wings West and *Tampa Airlines* both agree that a federal court injunction is proper if it is the only practical, effective means to enforce the duty under the RLA to exert every reasonable effort to make and maintain agreements, citing *Chicago & N.W. Ry.* Pet. App. A, pp. 8a, 10a; *Tampa Airlines*, 924 F.2d at 1010.[7] In *Wings West*, the Ninth Circuit held that this principle, together with the rule in *Williams*, made it improper under the RLA for a federal court to interfere in the collective bargaining process by enjoining a carrier's unilateral changes in working conditions where the parties had not yet commenced collective bargaining and no agreement of any kind existed. Pet. App. A, p. 10a. The Eleventh Circuit in *Tampa Airlines* specifically distinguished the case before it from *Williams* and *Wings West*, observing that in those cases there was no prior bargaining and no prior agreement. *Tampa Airlines*, 924 F.2d at 1009. The Eleventh Circuit concluded that, under *Chicago & N.W. Ry.*, "the only practical and

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[7] The Eleventh Circuit's comment in *Tampa Airlines* that the *Wings West* decision "contains language which might be interpreted as supporting Tampa Airlines' position that an injunction cannot [be] issue[d] until all RLA proceedings have been exhausted" is dicta, which is an insufficient basis for the granting of certiorari. *Tampa Airlines*, 924 F.2d at 1010. *See, Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387 (1923). The Ninth Circuit neither addressed nor ruled on this issue, contrary to RAPA's assertion on page 9 of the Petition.

effective remedy" was to enjoin Tampa Airline's unilateral changes in an agreed-upon status quo during the course of collective bargaining because failure to do so would undermine the bargaining position of the union. *Tampa Airlines*, 924 F.2d at 1010-1011. That position was grounded on the agreement that had been acknowledged by Tampa Airlines as the status quo.

CONCLUSION

For all of the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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